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PROMOTION AND PROTECTION OF HUMAN RIGHTS: STATUS OF THE INTERNATIONAL COVENANTS ON HUMAN RIGHTS

Written statement*/ submitted by Human Rights Advocates, Inc., a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[4 February 2000]

*/ This written statement is issued, unedited, as received from the submitting non-governmental organization(s).

STATUS OF THE INTERNATIONAL COVENANTS ON HUMAN RIGHTS

A call upon States to work toward abolishing the juvenile death penalty

1. Human Rights Advocates (HRA) supports the work of the Special Rapporteur on extrajudicial, summary or arbitrary executions to abolish the juvenile death penalty. HRA submits the following updated information on juvenile offender executions.

2. Since 1995, Iran, Nigeria, Pakistan and the United States have executed ten persons under the age of 18 at the time of their capital offense. The United States is responsible for seven of those executions.[1] In 1999, the Sub-Commission on the Promotion and Protection of Human Rights reaffirmed condemnation of the juvenile death penalty, as it is prohibited by the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Rights of the Child (CRC). The Sub-Commission resolution specifically mentions the U.S., Iran, Nigeria, Pakistan, Saudia Arabia, and Yemen, as those who executed juvenile offenders since 1990.[2]

3. The prohibition against applying the death penalty to juvenile offenders is non-derogable in the ICCPR and CRC. Furthermore, most countries that have not abolished the death penalty have at least done so for juvenile offenders.

United States of America

4. The United States is the most egregious violator of the prohibition against the juvenile death penalty, with 16 juvenile executions since the death penalty was reinstated in 1976.[3] *It is particularly appalling that the United States executed three juvenile offenders in the month of January 2000 alone.* In addition to international treaties which render juvenile offenders ineligible for the death penalty, surrounding circumstances cast serious doubts as to the validity of their convictions. Following are summaries of the most recent cases.

Sean Sellers was executed in Oklahoma on February 4, 1999 for a crime committed at age 16. Sellers was diagnosed with multiple personality disorder, however this was not explained to the jury. The United States failed to heed the plea of the U.N. High Commissioner for Human Rights to stop the execution.[4]

Douglas Christopher Thomas was executed in Virginia on January 10, 2000 for a crime committed at age 17. Thomas was convicted of killing his girlfriend, Jessica's, parents. However, two women in separate juvenile facilities reported that Jessica herself had confessed to killing her mother. The EU and American Bar Association intervened on Thomas' behalf. The U.S. Supreme Court, however, refused to consider Thomas' argument that his execution would violate the ICCPR.[5]

Steven Edward Roach was executed in Virginia on January 13, 2000 for a crime committed at 17. In order to persuade the jury of Roach's future "dangerousness," the prosecutor presented evidence of Roach's violations of the law–none of which involved violence. A federal judge described Roach's death sentence as disturbing. The U.N. High Commissioner for Human Rights urged the U.S. to stop Thomas' execution, but to no avail.[6]

Glen Charles McGinnis was executed in Texas on January 25, 2000 for a crime committed at 17. The son of a drug-addicted prostitute, McGinnis suffered severe abuse by his stepfather. McGinnis–an African-American–was convicted by an all-white jury. Pope John Paul II and the EU urged the U.S. to spare McGinnis's life. [7]

5. There are currently 70 juveniles on death row in the United States. Two-thirds of these juveniles are minorities and nearly two thirds of the victims were white.[8] Thirty-eight states and the Federal government have statutes authorizing the death penalty. Of those jurisdictions, 23 have set the minimum age below 18. Montana recently raised the minimum age from 16 to 18. Only seven U.S. states have actually executed juvenile offenders.

6. The United States ratified the ICCPR in 1992 with a reservation to article 6. The Human Rights Committee concluded that the reservation is incompatible with the ICCPR and recommended that it be withdrawn. [9] The United States is one of only two countries that has not ratified the CRC. In 1999, the Commission urged countries to prohibit the juvenile death penalty in compliance with the ICCPR and the CRC.[10]

7. The United States has blatantly defied the object and purpose behind the ICCPR. In 1999, 16 year-old offender Michael Domingues argued that his execution would violate the ICCPR. In response, the U.S. Solicitor General filed a brief with the United States Supreme Court, stating that the U.S. is not obliged under the ICCPR to abolish the juvenile death penalty. Despite international consensus to the contrary, the Solicitor General maintained that the U.S. reservation on the juvenile death penalty was valid, and the United States Supreme Court refused to review the case. [11]

Other violators

8. Iran ratified the ICCPR in 1976 and the CRC in 1994. At least one juvenile offender, Kazem Shirafkan, was executed in 1990. Three others were put to death in 1992. Most recently, 17 year-old Ebrahim Oorbanzade was executed in October 1999.[12]

9. Although Nigeria ratified the ICCPR, Nigeria violated the treaty in July 1997 when it executed Chiebore Onuoha, a 17 year-old who committed armed robbery at the age of 15. He was executed only two months after he was sentenced to die. [13]

10. Pakistan has yet to ratify the ICCPR, but ratified the CRC in 1990. The last known juvenile to be executed was Shamun Masih, who was hanged in 1997 for crimes he committed at age 14.[14] In 1995, parliament introduced the Child Offenders Bill, which, if passed, would set 16 as the minimum age for death penalty eligibility. Although the legislation is a step in the right direction, it falls short of the standard set by the ICCPR and CRC, which prohibit imposition of the death penalty to persons under 18 at the time of the offense.

11. Saudia Arabia has not ratified the ICCPR, but ratified the CRC in 1996, without reservations. At least one juvenile offender was executed in 1992 for blasphemy.[15] Those awaiting execution could include a group of Pakistani nationals, including children as young as five, held in secrecy on drug offenses.[16]

12. Despite its 1993 ratification of the ICCPR, Yemen put Nasser Munir Nasser al'Kirbi to death for murder and robbery; he was only 13 at the time of his execution. [17] Even though Yemen instituted a new Model Penal Code in 1994, which raised the minimum age for death penalty eligibility to 18, a juvenile offender's death sentence from 1995 was upheld by the Supreme Court and ratified by the President in 1997. The juvenile was 16 at the time he committed the offense.[18]

Recommendations

13. HRA recommends that the Commission encourage Iran, Nigeria, Pakistan, Saudi Arabia, and the United States to stop defying international norms regarding the juvenile death penalty. Those countries should submit annual reports to the Commission detailing their progress on prohibiting the juvenile death penalty and cooperate fully with the Special Rapporteur.

14. HRA recommends that the Commission request those countries to submit specific information on the following:

Efforts to educate its states and citizens about the requirements of the ICCPR and CRC and the prohibition of the juvenile death penalty;

Progress that each country is making in setting the statutory minimum age limit at 18 for death penalty eligibility and in commuting or overturning current juvenile death sentences;

Efforts to encourage individual states/provinces to implement their own legislation to prevent the execution of juveniles;

Reasons as to why each country is not working towards abolishing the juvenile death penalty, if the country is not doing so.

15. HRA commends Pakistan for the introduction of the Child Offenders Bill and encourages it to enact this legislation and report to the Special Rapporteur on its progress.

16. HRA recommends that the Commission urge Pakistan, Saudia Arabia and the United Arab Emirates to ratify the ICCPR without reservations and urge the United States to revoke its reservation to the ICCPR and ratify both the Second Optional Protocol to the ICCPR and the CRC without reservations.

17. HRA recommends that the Commission request all States to impose a moratorium on the execution of juvenile offenders. HRA further recommends that those States who have not executed juveniles in the past few years be encouraged to change their national legislation to reflect their prohibition of the juvenile death penalty.

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1. Amnesty International, United States of America - Shame in the 21st Century, AI Index: AMR 51/189/99, December 1999.

2. E/CN.4/Sub. 2/1999/4.

3. Death Penalty Information Center, Executions of Juvenile Offenders, January 2000.

4. Id.

5. Id.

6. AI, Shame in the 21st Century.

7. Id.

8. Streib, Victor, Death Sentences and Executions for Juvenile Crimes, January 1973-June 1999, June 1999, pp. 11-12.

9. CCPR/C/79/Add. 50 (1995), para. 14.

10. EC/CN.4/Res/1999/61.

11. Domingues v. Nevada, 114 Nev. 783, 961 P.2d 1279, cert. denied, 120 S. Ct. 396 (1999).

12. AI, Shame in the 21st Century.

13. AI, Death Penalty News, September 1997.

14. AI, The Death Penalty Worldwide: Developments in 1998, ACT 50/04/99.

15. AI Index: ACT 50/05/95.

16. AI Index: MDE 23/07/97, July 1997.

17. AI, Juveniles and the Death Penalty - Executions Worldwide Since 1990, November 1998, ACT 50/11/98.

18. Id. at pp. 26-28.